163-696

RECORD, CASE No. 15,104.

163-696

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., ~~1134~~. ~~788~~ ~~431~~ 15

THE STATE OF MISSOURI EX REL. JOHN S. LEMON, ISAAC T. HOSEA, AND JOHN S. LOGAN, ADMINISTRATORS OF MILTON TOOTLE, DECEASED, PLAINTIFFS IN ERROR,

vs.

THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI.

IN ERROR TO THE CIRCUIT COURT OF BUCHANAN COUNTY, STATE OF MISSOURI.

FILED AUGUST 16, 1892.

RECORD, CASE No. 15,104.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1134.

THE STATE OF MISSOURI EX REL. JOHN S. LEMON, ISAAC T. HOSEA, AND JOHN S. LOGAN, ADMINISTRATORS OF MILTON TOOTLE, DECEASED, PLAINTIFFS IN ERROR,

vs.

THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI.

IN ERROR TO THE CIRCUIT COURT OF BUCHANAN COUNTY, STATE OF MISSOURI.

INDEX.

	Original.	Print.
Petition for writ of error	1	1
Brief in support of petition for writ of error	8	8
Writ of error	10	9
Return on writ of error	11	9
Citation	12	9
Proof of service of citation	13	9
Caption	14	9
Order for writ of certiorari	14	9
Petition for writ of certiorari	14	9
Writ of certiorari	19	9
Sheriff's return	20	10
Return to writ of certiorari by board of equalization	21	10

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 8, 1892.

	Original.	Print.
Transcript from county court in matter of assessment of the personal property of Milton Tootle for 1887	22	11
Assessment book	24	12
List of personal property	27	14
Notice of meeting of board of equalization	29	16
Proceedings of board of equalization	29	16
Notice of raising assessed value	31	17
Proceedings of county board of appeals	32	18
Clerk's certificate	34	19
Return to writ of certiorari by Philip Rogers	35	19
Note of filing motion to strike out, &c.	36	20
Order submitting cause to special judge	37	21
Order granting leave to Rogers to file supplemental return	37	21
Judgment	37	21
Supplemental return of Philip Rogers	39	22
Order granting leave to file bill of exceptions, &c.	42	24
Order denying new trial, &c.	42	24
Affidavit of appeal	43	24
Bill of exceptions	44	25
Motion to strike out return of Rogers	44	25
Motion to strike out parts of return of board	45	25
Motion to vacate assessment, &c.	46	26
Motion to strike out supplemental return	48	27
Motion for new trial	50	29
Motion in arrest of judgment	51	29
Judge's certificate	52	30
Clerk's certificate	52	30
Proceedings in supreme court of Missouri	53	31
Order submitting cause	53	31
Judgment	53	31
Opinion	54	31
Petition for rehearing	60	35
Agreement as to time to file briefs, &c.	61	35
Order filing motion for rehearing	62	36
Order denying motion for rehearing	62	36
Order filing motion to transfer cause to court in banc	62	36
Order denying motion to transfer cause to court in banc	62	36
Motion to transfer cause to court in banc	63	36
Mandate from supreme court of Missouri	64	37
Opinion	64	37
Judgment	71	41
Judgment on mandate	73	41
Order filing bill of exceptions	73	42
Bill of exceptions	74	42
Objections to judgment on mandate	74	42
Judge's certificate	75	42
Bond on writ of error	76	43
Clerk's certificate	77	43

1 *Petition for Writ of Error.*

To the Honorable David J. Brewer, one of the justices of the Supreme Court of the United States:

John S. Lemon, Isaac T. Hosea, and John S. Logan, administrators of the estate of Milton Tootle, deceased, now come and present for your inspection a transcript of the record and proceedings of the circuit court of the State of Missouri for the county — Buchanan in a certain case lately pending therein, wherein The State of Missouri at the relation of John S. Lemon, Isaac T. Hosea, and John S. Logan, administrators of the estate of Milton Tootle, deceased, was respondent and The Board of Equalization of Buchanan County, Missouri, and others were appellants, and show that in said cause the said circuit court of Buchanan county, in obedience to a mandate of the supreme court of Missouri, has rendered judgment in favor of said appellants and against the respondent, and that in said record and proceedings it was claimed by said respondent, as shown by said record, that the statute of the State of Missouri relating to the powers, meetings, and action of the board of equalization of said State in reference to the changes of the assessment and valuation of personal property is in conflict with the section one of the fourteenth amendment to the Constitution of the United States in that said act attempts to deprive persons of property without due process of law, and that the decision of said supreme court of State of Missouri has been adverse to these petitioners and adverse to the right of the petitioners under the said amendment to the Constitution of the United States.

And these petitioners ask, therefore, that writ of error be issued to the circuit court of the State of Missouri for the county of
2 Buchanan, so that the record and proceedings aforesaid may be brought before the Supreme Court of the United States that said error may be corrected; and your petitioners will ever pray.

GEO. G. VEST,
HALL & PIKE,
H. K. WHITE,
Attorneys for Petitioners.

3 STATE OF MISSOURI upon the Relation of JOHN S. LEMON *et al.*, Administrators of the Es-ate of Milton Tootle, Deceased, Respondent,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI, *et al.*, Appellants.

Statement and Brief upon Petition for Writ of Error from the Supreme Court of the United States.

Appellants desire to bring this case before the Supreme Court of the United States to obtain its decision as to the constitutionality of certain sections of the revenue act of the State of Missouri.

They claim that sections 6671, 6672, 6673, 6674 of the Revised Statutes of the State of Missouri for the year 1879 are unconstitutional, as being in violation of section one of the fourteenth amendment to the Constitution of the United States of America, in so far that these sections purport to confer power to the board of equalization to raise the valuations of personal property.

By the record and accompanying papers it will be seen that the administrators of the estate of Milton Tootle sued out a writ of certiorari from the circuit court of Buchanan county, Missouri, to have the record and proceedings of the board of equalization of Buchanan County, Missouri, for the year 1887 brought before said court for its action as to the validity of the attempted raise of valuation of the personal estate of Milton Tootle, deceased, by said board of equalization.

4 Their petition for the writ of certiorari will be found in the transcript from the supreme court of the State of Missouri, on pages one to six.

The return of the board will be found on pages seven to twenty.

Upon hearing before the circuit court of Buchanan county the proceedings of the board of equalization *was* declared illegal and void, and the assessment returned by the assessor upon the valuation made by Milton Tootle in his lifetime was reinstated.

See Transcript, page 22.

The defendant appealed to the supreme court of the State of Missouri, and the case was heard before division number one of said court at its April term, 1891.

The facts of the case are succinctly stated in the brief of respondent filed in the supreme court of the State, a copy of which brief accompanies this transcript.

See Respondent's Brief, pages one to three.

At the October term, 1891, of the supreme court division number one of said court reversed the decision of the circuit court and remanded the case to the circuit court of Buchanan county with instructions to reinstate the change of valuation made by the board of equalization.

See Transcript, pages 38 and 39.

In the opinion of the supreme court will be found in the transcript, pages 39 to 44, the sections of the revenue act above referred to.

Respondent, having made an unsuccessful motion for rehearing, filed a motion to have the case heard before both divisions of the supreme court of the State of Missouri, sitting in banc, under the provisions of the constitution of the State of Missouri. Within

5 the exclusive jurisdiction of the United States, would the Supreme Court of the United States hold this act to be constitutional under the provisions of section one of the fourteenth amendment?

This court, therefore, has jurisdiction of the subject-matter, because if the statute of the State of Missouri does deprive persons of property without due process of law it is void, and this court is

not concluded by the decision of the Missouri supreme court, but can hear and determine this question and pass upon the constitutionality of this act with- regard to the decisions of the supreme court of Missouri.

It is said in Butz *vs.* Muscatine, Eighth Wallace, 582:

"In all the cases brought here under the 25th section of the judiciary act this court has never hesitated to determine for itself the construction and effect of any statute of any State brought under review without reference to the previous adjudications of the highest court of the State upon the subject. In the opinion delivered in the case of The Jefferson Branch of the State Bank of Ohio *v.* Skelley it was well asked, Of what value would the appellate power of this court be to the party aggrieved if such were not the rule? In that case and in all the other cases brought here involving the same question an act of the legislature of Ohio was pronounced invalid, and the judgements of the supreme court of the State were reversed. Cases may be brought here from the circuit court of such a character that it is necessary to the right administration of justice that we should proceed upon the same principle in deciding them. Indeed, questions which are identical may be brought herein both ways."

Under such circumstances it will hardly be insisted that State adjudications are to control in one case and not in the other,
6 as amended in 1890, by which it is prescribed that all the judges will sit together in any case before the court involving a Federal question.

See section four of amendment of the constitution of the State of Missouri, Session Act- 1889, page 322. This motion was denied.

See Transcript, page 347

The motion filed calls attention of the supreme court of Missouri to section one, article fourteen, of the amendment of the Constitution of the United States, which provides that no State shall deprive any persons of life, liberty, or property without due process of law.

See Transcript, page 348.

Argument.

The provisions of the bill of rights in the Missouri constitution in reference to depriving persons of property without due process of law are substantially the same as those of section one of the fourteenth amendment to the Constitution of the United States.

The question presented now upon this application for a writ of error is not, Has the supreme court of the State of Missouri correctly declared the law in deciding whether or not this statute is in conflict with the constitution of the State of Missouri, because if this were the sole question, it is conceded the Supreme Court of the United States would have no jurisdiction.

The question is: Does this statute infringe the above provisions of the Constitution of the United States?

In other words, if the act in question had been passed by Congress of the United States to apply to persons and places,
7 our duty depends upon the questions involved and not upon the channel through which the case comes before us. Where the settled decisions in relation to a statute local in its character have become rules of property, these remarks have no application. In such cases this court will, as it always has done, follow such adjudications. The cases of a different character, involving State statutes in which the adjudications of the courts of the States in relation to them have been departed from by this court, extend in an unbroken series from an early period after its organization to the present time."

And it is further declared that where a statute of the State is assailed as being in violation of the Constitution of the United States, and held by the supreme court of the State to constitutional, the Supreme Court of the United States will entertain jurisdiction and decide the question of the constitutionality of the law assailed without being concluded by the decisions of the State court.

Railroad Company against Maryland, 21 Wallace; 457.
Spencer *vs.* Merchant, 125 U. S., 345.

H. K. WHITE.
HALL & PIKE.
G. G. VEST.

8 At Chambers, Topeka, Kas., July 25th, 1892.
Upon presentation of this petition and record of the circuit.
9 [Endorsed:] *In re* State of Missouri, *ex rel.* Lemon *et al. vs.* Board of Equalization. Petition for writ of error, with brief.

10 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of Buchanan county, in the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between State of Missouri upon the relation of John S. Lemon, Isaac T. Hosea, and John S. Logan, administrators of the estate of Milton Tootle, deceased, plaintiff, and The Board of Equalization of Buchanan County, Missouri, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears, as the act of the State of Missouri in relation to the changes of assessment of personal property is in conflict with section one of the fourteenth amendment of the Constitution of the United States and the decision of the supreme court of Missouri has been adverse to the petitioner and adverse to the rights of the petitioner under said amendment, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send

the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 25th day of July, A. D. 1892.

[Seal U. S. Circuit Court, St. Joseph Div., Western Dist. Mo.]

CHAS. A. POLLOCK,
Clerk of the Circuit Court of the United States for the District of Missouri, St. Joseph Division.

Allowed July 25th, 1892.

DAVID J. BREWER,
Associate Justice Sup. C't.

Supersedeas bond fixed at $15,000.00, sureties to be approved by the clerk of the United States circuit court at St. Joseph, Mo.

DAVID J. BREWER, *Justice.*

11 [Endorsed:] No. —. State of Missouri *ex rel.* adm's M. Tootle, dec'd, P. E., *vs.* Board of Equalization of Buchanan Co., Mo., D. E. Writ of error.

STATE OF MISSOURI, }
County of Buchanan, } *ss:*

I, Samuel D. Cowan, clerk of the circuit court within and for the county aforesaid, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled cause. I further certify that the original citation and writ of error are hereto attached and herewith returned.

Buchanan Circuit Court Seal, Missouri.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 6th day of August, A. D. 1892.

S. D. COWAN, *Clerk,*
By C. W. THOMPSON, *D. C.*

12 The United States of America to the Board of Equalization of Buchanan County, Missouri, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, city of Washington, District of Columbia, thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein The State of Missouri at the relation of John S. Lemon, Isaac T. Hosea, and John S. Logan, administrators of the estate of Milton Tootle, deceased, were plaintiffs in error and you are defendant in error, to show cause, if any there

be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable David J. Brewer, one of the justices of the Supreme Court of the United States, this 25th day of July, in the year of our Lord one thousand eight hundred and ninety-two.

DAVID J. BREWER,
Associate Justice Sup. C't U. S.

13 We accept service of copy this 2nd day of August, 1892.
S. S. BROWN & PORTER & WOODSON,
Att'ys for Defendants in Error.

[Endorsed:] No. —. State of Missouri *ex rel.* adm's M. Tootle, dec'd, P. E., *vs.* Board of Equalization of Buchanan Co., Mo. Citation.

14 STATE OF MISSOURI, } *ss:*
County of Buchanan, }

Be it remembered that on the 14th day of October, 1887, being the 29th day of the regular September term of circuit court for the county and State aforesaid, among others the following proceedings were had and entered of record, to wit:

STATE OF MISSOURI, to the Use of JOHN S. LEMON, ISAAC T. HOSEA, and JOHN S. LOGAN,
vs.
A. M. DOUGHERTY *et al.*

Come now the plaintiffs, by their attorney, and file petition for a writ of certiorari, which said petition is submitted to the court, and it is ordered that said writ issue, directed to the sheriff of Buchanan county and made returnable on the 8th day of November, A. D. 1887; which said petition is in words and figures as follows, to wit:

In the Circuit Court of Buchanan County, Missouri.

STATE OF MISSOURI on the Relation and to the Use of JOHN S. LEMON, ISAAC T. HOSEA, and JOHN S. LOGAN, Administrators of the Estate of Milton Tootle, Deceased, Plaintiff,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI; A. M. Dougherty, John Kelly, James Ferrell, Theodore Steinacker, and Philip Rogers, Defendants.

Plaintiff states that during the years 1885–'86 Milton Tootle was a resident of the county of Buchanan, State of Missouri; that on the 2nd day of January, 1887, said Milton Tootle departed this life, and afterwards, to wit, on the 25th day of January, 1887,
15 these relators were by the decision and judgment of the probate court of Buchanan county, Missouri, duly appointed administrators of the estate and effects of said Milton Tootle, deceased; that they accepted said trust, have given bond as such administrators, as required by law, and that at all times since said ap-

pointment have been, and still are acting as such administrators. These relators further show to the court that defendants Dougherty, Kelly, and Ferrell are the duly elected, qualified, and acting judges of the county court of Buchanan county, Missouri, and that Theodore Steinacker is the duly elected, qualified, and acting county surveyor of the county of Buchanan, State of Missouri; that Philip Rogers is the duly elected, qualified, and acting clerk of the county court of the county of Buchanan, State of Missouri; that said last named persons have held offices respectively since the 1st day of January, 1887.

During the year 1886 John P. Boyle was county assessor of the county of Buchanan, State of Missouri, and so continued to be such assessor till the date of his death, which was on or about the 20th day of April, 1887.

Your relators further show to the court that during the year 1886, on or about the 3rd day of December, 1886, said Milton Tootle was required by said J. P. Boyle to make a correct statement of all taxable property owned by him, except merchandise, in accordance with the provision of article two (2), chapter one hundred and forty-five (145), of the Revised Statutes of the State of Missouri for the year 1879; that said Milton Tootle then and there made, so far as known by these relators, a true and correct list of such property on a printed blank paper furnished by said assessor for that purpose, and subscribed to the affidavit required by said article, which was then and there administered by said assessor in the form and
16 manner required by said chapter of said laws; that said assessor accepted said statement so verified and the values stated as true and correct, and then and there assessed said Milton Tootle, in accordance with said statement so verified as true and correct, with the personal property so returned by said Milton Tootle to the value one hundred and four thousand two hundred and fifty ($104,250) dollars, and placed said assessment upon the assessment-rolls (of Buchanan county) of personal property for the year 1887.

And your relators further show that on the first Monday in April, 1887, said persons above named as judges of the county court of Buchanan county, State of Missouri, and as county surveyor thereof and said assessor met at the office of the clerk, in the court-house, in St. Joseph in said county.

And your relators further upon information and belief show and aver that said persons above named did not take any oath whatever to fairly and impartially equalize the valuation of all taxable property in said county, nor do the records of said board of equalization show that such oath was taken, but they have taken such proceedings without notice to these relators or any one else, and without having jurisdiction then and there to so proceed; that they did on the 6th day of April, 1887, attempt to enter in the records of the county board of equalization of said county an order to the effect that the personal property of Milton Tootle's estate be raised as follows: From one hundred and four thousand two hundred and fifty ($104,250) dollars to nine hundred and eighty thousand ($980,000)

dollars; that said attempted order was, by the direction of the persons aforesaid, by Philip Rogers entered upon the records of said county board of equalization in the manner aforesaid without legal or sufficient evidence before them and without jurisdiction then and there to consider said matter or to make any order whatever in relation thereto.

17 That subsequently, to wit, on or about the 8th day of April, 1887, said persons so assuming *the* act as a board of equalization of Buchanan county, Missouri, adjourned without day and entered an order to that effect on said record, and without having ordered any notice whatever to be given to the relators of the action by them so assumed to have been taken; that subsequently said persons, except said Boyle, who had in the meantime departed this life, met at the court-house, in St. Joseph, and assumed to call themselves a board of appeals, and then and there caused said Philip Rogers to enter an order in the book used as a book of the records of the board of equalization of Buchanan county to the effect that the personal-property assessment of Milton Tootle's estate be reduced from nine hundred and eighty thousand ($980,000) dollars to seven hundred and ten thousand ($710,000) dollars.

That said Philip Rogers, county clerk aforesaid, has entered upon the tax book of the personal property of Buchanan county, Missouri, as the amount of the personal property taxable to the estate of Milton Tootle, the last-mentioned sum, to wit, seven hundred and ten thousand ($710,000) dollars, and said tax book is now in the hands of the collector of Buchanan county, Missouri.

Your relators aver that said attempted orders of said persons assuming to act as board of equalization of Buchanan county, Missouri, are void as to these relators, the administrators of Milton Tootle, as no legal or valid notice of said attempted proceedings was ever served upon these relators or any of them as administrators of said Milton Tootle, deceased, because the pretended board of equalization was not at the time of the pretended orders legally constituted as a board of equalization for the consideration of equalization of the valuation of the personal property within the

18 county of Buchanan made taxable by law for the year 1887, and that said proceedings upon their face appear illegal, uncon-cionable, and unjust. Your relators further show that they have now in their possession and control belonging to said estate of Milton Tootle a large sum of money, to wit, more than the sum of sixteen thousand ($16,000) dollars, which is more than sufficient to pay the amount levied by said county of Buchanan upon said pretended change of assessment as placed upon the collector's books of personal property for the year 1887, which said sum so levied they will be compelled to pay to the collector of Buchanan county, Missouri, unless said assessment be shown by appropriate legal proceedings to be unjust, illegal, and void.

These relators therefore pray this court to issue a writ of certiorari to said County Board of Equalization of Buchanan County; — said A. M. Dougherty, James Ferrell, and John Kelly, judges of the county court thereof; to Theodore Steinacker, surveyor of Buchanan county,

Missouri, and to Philip Rogers, clerk of the county court of Buchanan county, Missouri, requiring a full and complete copy of each and all papers, orders, proceedings, and all other records by such board of equalization or its officers made and kept of and relating to the assessment and pretended change of assessment of the personal property of Milton Tootle aforesaid, to have said copies certified and returned to this court on or before the — day ——, 1887.

And these relators pray the court to adjudicate upon the legality of said record and proceedings of assessment and pretended change of assessment and to annul said attempted change of assessment and declare *to* same to be void, to reinstate said assessment so made by said assessor of Buchanan county, Missouri, upon the statement of said Milton Tootle, and to make such further orders, judgments, directions thereon as may be found right, lawful, and just,
19 and for the relators' costs therein expended.

H. K. WHITE,
S. C. WOODSON,
Attorneys for Relators.

STATE OF MISSOURI, } ss:
County of Buchanan, }

John S. Lemon, Isaac T. Hosea, and John S. Logan, being duly sworn, state that they are the relators above named, and that the facts, matters, and things in said petition stated are true, as they firmly believe.

JOHN S. LEMON.
ISAAC T. HOSEA.
JOHN S. LOGAN.

Subscribed and sworn to before me this 14th day of October, 1887. My commission expires June 7, 1890.

GRAHAM G. LACY, [SEAL.]
Notary Public within and for the County of Buchanan, in the State of Missouri.

Which said writ of cert-orari and sheriff's return thereon are as follows, to wit:

STATE OF MISSOURI, } ss:
County of Buchanan, }

To the Board of Equalization of Buchanan County; A. M. Dougherty, John Kelly, and James Ferrell, judges of the county court of Buchanan county; Theodore Steinacker, surveyor of Buchanan county, and Philip Rogers, clerk of the county court of Buchanan county, Greeting:

We, being willing for certain causes, to be certified in our circuit court of certain proceedings lately before you in the matter of
20 the assessment of the personal estate of Milton Tootle, now deceased, for the taxes for the year 1887, do command you that without delay you send to us, in our circuit court within and for the county of Buchanan, a certified transcript of the record and

proceedings aforesaid, with all things touching the same, as fairly and entirely as they remain of record and on file before you, together with this writ, so that, having the same in our said circuit court, at St. Joseph, on the 8th day of November, 1887, at the court-house in said county, at St. Joseph aforesaid, we may further cause to be done thereupon what of right we shall see fit to be done.

Witness Samuel D. Cowan, clerk of our circuit court, [SEAL.] with the seal of said court, at St. Joseph, this 15th day of October, 1887.

S. D. COWAN, *Clerk.*

Sheriff's Return.

Executed the within writ in the county of Buchanan, the 15th and 17th days of October, A. D. 1887, by delivering a true copy thereof to A. M. Dougherty, John Kelly, and James Ferrell, judges of the county court of Buchanan county; Theodore Steinacker, county surveyor of Buchanan county; Philip Rogers and Philip Rogers, clerk of the county court of Buchanan county, Missouri.

JOSEPH ANDRIANO, *Sheriff,*
By GEO. C. CROWTHER, *D. S.*

Fees $6.00.

And afterwards, on the 9th day of November, 1887, the defendants, The Board of Equalization of Buchanan county, Missouri; A. M. Dougherty, John Kelly, James Ferrell, Theodore Steinacker, and Philip Rogers, file their return to the writ of certiorari; which said return is in words and figures as follows, to wit:

In the Circuit Court within and for Buchanan County, Missouri.

21 STATE OF MISSOURI on the Relation and to the Use of John S. Lemon, Isaac T. Hosea, and John S. Logan, Administrators of the Estate of Milton Tootle, Deceased, Plaintiff,

vs.

THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI; A. M. Dougherty, John Kelly, James Farrell, Theodore Steinackar, and Philip Rogers, Defendants.

Come now the above-named defendants and for their return to the writ of certiorari heretofore issued in this cause bring here into court a full, true, and complete transcript of the records of the board of equalization of Buchanan county, Missouri, relating to the valuation and assessment for taxation for the year 1887 of the personal property belonging to and under the control of Milton Tootle, on the 1st day of June, A. D. 1886; and for further return to said writ these defendants say that they, together with John P. Boyle, then assessor of said county, met at the office of the county clerk of said county on the 1st Monday in April, A. D. 1887, and then and there the said A. M. Dougherty, John Kelly, James Farrell, Theodore Steinacker, and John P. Boyle each severally for himself took an oath, which was then and there administered by said clerk, fairly and impartially to equalize the valuation of all the taxable property

in said county, and thereupon proceeded with the performance of their duties, as set forth in the transcript herewith filed.

That on the 10th day of April, 1887, the said board of equalization caused notice to be given to relators of the action theretofore taken by them with reference to the said assessment in the manner fully set forth in the said transcript filed herewith; which
22 said notice was duly seen and heard by relators, who thereupon, by their attorneys and with witnesses, appeared before the said board of equalization at the time and place in said notice mentioned, introduced *value* as to the value of said personal property, and caused all the matters and things connected therewith to be fully argued by their counsel; and thereupon the said board upon said hearing made such orders therein as are set forth in said transcript.

That said board did not preserve the testimony upon said hearing, nor did they nor their said counsel ask or request that any matter by them objected to be entered upon the journal then and there kept by the secretary of said board.

Wherefore defendants say that the said assessment is legal, valid, and binding upon all concerned and ought not in any manner be set aside, vacated, or annulled, and ask that they be dismissed with their costs in this behalf expended.

RAMEY AND BROWN,
Att'ys for Def't.
WOODSON AND WOODSON.
A. M. DOUGHERTY.
JAMES FARRELL.
JOHN KELLY.
THEODORE STEINACKER.

A. M. Dougherty, John Kelly, and James Farrell and Theodore Steinacker, defendants above named, being severally sworn, each for himself upon his oath states that the matters set forth in the above and foregoing return are true.

[SEAL.] S. D. COWAN, *Clerk.*

Transcript of records and files in the office of the clerk of the county court within and for Buchanan county, Missouri, in the matter of the assessment of the personal property of Milton Tootle for taxation for the year 1887.

23 Be it remembered that on the 27th day of December, A. D. 1886, John P. Boyle, assessor within and for Buchanan county, Missouri, returned to the county court of said county a fair copy of the assessor's book containing the assessment of personal property of said county for taxation for the year 1887; which said assessor's book, so far as the same relates to the assessment of the personal property of Milton Tootle, together with the affidavit thereto attached, is in words and figures following:

24 & 25 11. *Assessment List of Personal —, State of Missouri, City of St. Joseph, Buchanan County, for the Year* 1887.

Cur. Nos.	To whom assessed.	Sec.	T'w'p.	R'ng.	(Class second.) Live stock. Horses. No.	Horses. Value. Dolls.	Asses & jennets. No.	Asses & jennets. Value. Dolls.	Mules. No.	Mules. Value. Dolls.	Cattle. No.	Cattle. Value. Dolls.	Sheep. No.	Sheep. Value. Dolls.	Hogs. No.	Hogs. Value. Dolls.	All other live stock. No.	All other live stock. Value. Dolls.
	Tootle, Milton				3	200					2	50						

Money, notes, bonds, and other credits.	All other personal property.	Total valuation by assessor.	Total valuation by Co. board of equalization. Dollars.	Total valuation by State board of equalization. Dollars.	State rev. tax, 20 cts. per $100. $ cts.	State int. tax, 10 cts. per $100. $ cts.	Co. rev. tax, — cts. per $100. $ cts.	Co. int. tax, — cts. per $100. $ cts.	Co. road tax, — cts. per $100. No. D.	Co. road tax, — cts. per $100. $ cts.	— tax, — cts. per $100. $ cts.	Total tax. $ cts.
100,000	4,000	104,250										

STATE OF MISSOURI, }
Buchanan County. }

John P. Boyle, being duly sworn, makes oath and says that he has made diligent efforts to ascertain all the taxable property being or situate on the first day of June last past in the county of which he is assessor; that, so far as he has been able to ascertain the same, it is correctly set forth in the foregoing book in the manner and the value thereof stated therein according to the mode required by law.

JOHN P. BOYLE.

Subscribed and sworn to before me on this the 27th day of December.

Witness my hand and seal of office.

[Seal of Buchanan Co. Court.]

PHIL. ROGERS, *Clerk*,
By J. B. BERNARD, *D. C.*

26 And on the 1st day of January, 1887, the said assessor filed in the office of the clerk of the county court of said county a list of the personal property belonging to on under the control of Milton Tootle on the 1st day of June, 1886; which list, with the oath thereon, is in words and figures following:

13. *Assessment List (under Act of April 28, 1877).*

List of taxable personal property belonging to or under the control of —— ——, of St. Joseph, Washington township, Buchanan county, State of Missouri, on the first day of June, 1886. Personal property.

Class.	No. of	Articles.	Value.	Total value by classes.	Totals for assessor's book.	
Second....	3	Horses, mares, and geldings, all ages	$200 00			Remarks.—When a person lists personal property in a county, State, or Territory other than the one in which he resides, note it in this column, under the head of "remarks."
		Asses and jennets, all ages				
		Mules, all ages				
	2	Neat cattle, all ages	50 00			
		Sheep, all ages				
		Hogs, all ages				
		All other live stock		$250		
Fifth.....	Money on hand				(Money, notes, bonds, and other credits.)	
Sixth	Money deposited in bank or other safe place					
Seventh...	Aggregate statement of solvent notes unsecured by mortgage or deed of trust					
Eighth....	Aggregate statement of solvent notes secured by mortgage or deed of trust					
Ninth.....	Aggregate statement of all solvent bonds, whether State, county, town, city, township, incorporated or unincorporated companies			$100,000	$100,000	
Third.....	Aggregate statement of all farm machinery and implements					
	No. of		Value.			
Fourth....		Pianos			(Other personal property.)	
		Other musical instruments				
		Clocks				
		Watches, chains, and appendages				
		Sewing machines				
		Gold and silver plate				
		Jewelry, all kinds				
		Household and kitchen furniture	$2,500	$2,500 00		
Tenth.....	.....shares in building or loan association, of the value of $.....per share... All other property not above numerated, except merchandise and its value.—Under this head shall be included all pleasure carriages of all kinds, all shares of stock or interest held in steamboats, keel-boats, wharf-boats, and all other vessels; all toll-bridges, all printing presses, type, and machinery therewith connected, and all portable mills of every description; all post coaches, carriages, wagons, and other vehicles used by any person in the transportation of mails (except railway carriages), all carriages, hacks, wagons, buggies, and other vehicles of any kind and description kept or used by liverymen; all carriages, all carts, hacks, omnibusses, and other vehicles used in the transportation of persons (except railway carriages), and all paintings and statuary, and every other species of property not exempt by law from taxation.			$1,500 00		
	Total valuation			$104,250 00		

28 *Affidavit.*

(Section 6688, Revised Statutes, as amended by acts of 1881.)

STATE OF MISSOURI, *ss:*

I, —— ——, do solemnly swear (or affirm) that the foregoing list contains a true and correct statement of the property made taxable by the laws of the State of Missouri, including therein the number of horses, number of neat cattle, number of sheep, number of hogs, number of asses and jennets, number of mules, all other live stock, all farm machinery and implements, household property, musical instruments, clocks, watches, chains and appendages, sewing machines, gold and silver plate, jewelry, household and kitchen furniture, money on hand, money deposited, notes unsecured by mortgage or deed of trust, notes secured by mortgage or deed of trust, all bonds, whether State, county, town, city, township, or of incorporated or unincorporated companies, and all other property and its value, which I owned on the first day of June, 1891, or which I had under my charge or management, or any money or property due me on said day from solvent persons or companies on notes, accounts, or otherwise, as fully and as specifically as I am required to make a return thereof under section 6685; and I do further solemnly swear (or affirm) that I have not sent or taken, or caused to be sent or taken, any property, money or bills, bonds or notes, or other securities or evidences of debt out of this State to avoid taxation, so help me God.

MILTON TOOTLE.

Subscribed and sworn to before me this 30 day of December, 1886.

J. P. BOYLE, *Assessor.*

To —— ——.

SIR: You are hereby requested to list your real and personal property according to law upon this blank, and to deliver this blank, with such list thereon, to me at ——, on or before the — day of ——, 1891.

—— ——, *Assessor.*

NOTE—All property must be valued at its cash value on first day of June.

Section 6685, Rev. Stat., provides how property must be listed and assessed.

Section 6687, Rev. Stat., provides that the assessor is liable to a fine of not less than ten dollars, to be recovered by suit or indictment, for each list received by him without the same has been duly sworn to, and makes it the duty of the court having criminal jurisdiction to give the section in charge to the grand jury at each term of the court.

Section 6688 prescribes the form of the oath; provides that if any person shall refuse to take the oath he shall be subject to a fine of

not less than ten dollars nor more than one thousand dollars, to be recovered by suit or indictment; no property exempt from such fine, and the court shall give the section in charge to the grand jury at each term of court; also for preserving the lists on file in clerk's office for inspection of grand jury.

Section 6690 provides if any person fails to deliver the list required the property of such person shall be assessed double.

Section 6691 provides if any person makes a false list his property shall be assessed treble the amount of taxes, in addition to the pains and penalties of perjury.

County clerks will furnish the assessors with the blanks under section 6685.

[Endorsed:] Assessment list of Milton Tootle, St. Joseph, Washington township, Buchanan county, Missouri. Filed in my office this 1st day of January, 1887. Phil. Rogers, county clerk.

29 And afterward the county court of said county caused to be published in the St. Joseph Daily and Weekly Gazette, a newspaper printed and published in the English language, in the city of St. Joseph, in said county, and of general circulation in said county, and in every issue of said daily and weekly newspaper from the 17th day of March until the 4th day of April, 1887, inclusive, a notice which, with the endorsement thereon, is in words and figures following:

"County board of equalization.

"The county board of equalization will meet at the court-house to hear and determine allegations for erroneous assessments for the year 1887. Said board will meet on the first Monday in April next, 1887, and continue in session four days. The county court will hear no complaints of assessment after the said board has adjourned.

PHIL. ROGERS,
County Clerk.

St. Joseph, Mo., March 17, 1887."

(Endorsed:) Filed May 3, 1887. Phil. Rogers, clerk.

And afterward, on the 4th day of April, A. D. 1887, the following proceedings were had and entered upon the records of the board of equalization of said county:

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered, on the 4th day of April, 1887, the county board of equalization met according to law.

30 Present: A. M. Dougherty, Co. judge; John Kelly, Co. judge; James Farrell, Co. judge; James P. Boyle, assessor; Theo. Steinacker, surveyor; Phil. Rogers, clerk.

And afterward, on the 6th day of April, A. D. 1887, the said board of equalization being still in session, the following proceedings were had and entered upon said record:

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on the 6th day of April, A. D. 1887, county board of equalization met pursuant to adjournment.

Present: Judges A. M. Dougherty, county judge; John Kelly, county judge; James Farrell, county judge; J. P. Boyle, assessor; Theo. Steinacker, surveyor; Phil. Rogers, clerk.

Ordered that the personal property of Milton Tootle's estate be raised from $104,250.00 to $980,000.00.

And afterward, to wit, on the 8th day of April, A. D. 1887, the said board of equalization being still in session, the following proceedings were had and entered upon said record.

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on the 8th day of April, A. D. 1887, county board of equalization met pursuant to adjournment,

31 Present: Judges A. M. Dougherty, John Kelly, James Farrell; P. Boyle, assessor; Theo. Steinacker, surveyor; Phil. Rogers, clerk.

Amongst others the following was made and entered of record:

No other business before the board, they adjourned *sine die.*

And afterward the said board of equalization caused to be published in the St. Joseph Daily and Weekly Gazette, a newspaper published in the English language, in the city of St. Joseph, in said Buchanan county, Missouri, and of general circulation throughout said county, in every issue of said daily and weekly newspaper from the 10th day of April, 1887, inclusive, a notice which, with endorsement thereon, is in words and figures following:

Notice! Notice!

"County board of equalization."
"To whom it may concern:"

"Notice is hereby given that the county board of equalization within and for the county of Buchanan, State of Missouri, at its session for the year 1887, did raise the assessed value of personal property hereinafter described, and that the board of appeals for the county of Buchanan, State of Missouri, will be commenced and held at the court-house, April 25th, 1887, to hear and determine any and all complaints or appeals from the assessments as corrected and equalized.

32	Amount as given in by assessor.	Amount as corrected by the board.
Estate of Milton Tootle	$104,250	$980,000

A true copy of the records in my office.

In testimony whereof I have hereunto set my hand and [SEAL] affixed my official seal this 9th day of April, 1887, at St. Joseph, Mo.

PHIL. ROGERS, *Clerk.*

(Endorsed:) Filed May 2, 1887. Phil Rodgers, county clerk.

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on the 25th day of April, A. D., 1887, the county board of appeals met in the county court-room, in said county, pursuant to notice and as law directs.

Present: A. M. Dougherty, county judge; John Kelly, county judge; James Farrell, county judge; Theo. Steinacker, surveyor; J. P. Boyle, assessor; (absent) Phil. Rogers, clerk.

And afterward, on the 27th day of April, A. D. 1887, the said board being still in session, the following proceedings were had and entered upon said record:

On consideration of the increase of the personal-property assessment of Milton Tootle, deceased, at the request of the attorneys, it is hereby continued until Monday morning, May 2nd, 9 a. m., 1887.

33 And afterward, on the 2nd day of May, 1887, the said board being still in session, the following proceedings were had and entered upon said record:

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on the 2nd day of May, 1887, the county board of appeals met in the county court-room, in said county, pursuant to adjournment.

Present: A. M. Dougherty, county judge; John Kelly, county judge; James Farrell, county judge; J. P. Boyle, assessor (absent); Theo. Steinacker, surveyor; Phil. Rogers, clerk.

The consideration of the increase of the personal-property assessment of Milton Tootle's estate: The court, after hearing the evidence introduced against the increase of the personal property of the Tootle estate as raised by the board of equalization, took the matter under advisement until May 9th, 1887.

And afterward, on the 9th day of May, 1887, the said board being still in session, the following proceedings were had and entered upon said record:

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on the 9th day of May the county board of appeals met in the county court *record*, in said county, pursuant to adjournment.

Present: A. M. Dougherty, county judge; John Kelly,
34 county judge; James Farrell, county judge; Theo. Steinacker, surveyor; Phil. Rogers, clerk.

The consideration of the increase of the personal-property assessment of Milton Tootle's estate: The court, after hearing the evidence introduced against the increase of the personal property of the Tootle estate as raised by the board of equalization, took the matter under advisement until May 9th, 1887.

And afterward, on the 9th day of May, 1887, the said board being still in session, the following proceedings were had and entered upon said record:

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on the 9th day of May the county board of appeals met in the county court *record*, in said county, pursuant to adjournment.

Present: A. M. Dougherty, county judge; John Kelly, county judge; James Farrell, county judge; Theo. Steinacker, surveyor; Phil. Rogers, clerk.

Ordered by the court that the personal assessment of Milton Tootle's estate be reduced from $980,000.00 to $710,000.00.

STATE OF MISSOURI, } ss:
County of Buchanan, }

I, Phil. Rogers, clerk of the county court within and for the county and State aforesaid, do certify that the foregoing is a full, true, and complete transcript of all the proceedings relating to the assessment of the personal property of the estate of Milton Tootle for tax-
35 ation for the year 1887, as the same appears in the records of the county board of equalization of said county and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in the city of St. Joseph, in said county, this — day of November, A. D. 1887.

[SEAL.] PHIL. ROGERS, *Clerk.*

And on the same day, November 9th, 1887, Philip Rogers files his seperate return to said writ, which is in words and figures as follows, to wit:

In the Circuit Court within and for Buchanan County, Missouri.

STATE OF MISSOURI on the Relation and to the Use of JOHN S. Lemon, Isaac T. Hosea, and John S. Logan, Administrators of the Estate of Milton Tootle, Deceased, Plaintiff,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI; A. M. Dougherty, John Kelly, James Farrell, Theodore Steinacker, and Philip Rogers, Defendants.

Philip Rogers, one of the above-named defendants, for his seperate and further return to the writ heretofore issued herein, says that on Monday, the 4th day of April, 1887, A. M. Dougherty, John Kelly, James Farrell, Theodore Steinacker, and James P. Boyle, members of the board of equalization within and for Buchanan county, Missouri, met at the office of this defendant, who was then and there and still is county clerk of said county, on Monday, the 4th day of April, A. D. 1887, and that each of said persons then and there took an oath fairly and impartially to equalize the valuation of all the taxable property in said county, which said oath was duly
36 and lawfully administered to each of said persons by this defendant, and said board then and there organized and proceeded to the performance of the duties prescribed by law.

That this defendant is advised by the petition herein that it then became and was his duty as the secretary of said board to then and there enter the said oath upon the journal of said board as part of the proceedings thereof.

Wherefore this defendant prays that if it shall be adjudged by this court upon the objection of the relators that it was the duty of this defendant so to enter said oath on said journal, that he may now be permitted to perform said duty and enter the same, so that said journal may fully set forth the truth of the matter hereinbefore stated.

PHIL. ROGERS.

Philip Rogers, the above-named defendant, being first duly sworn, on his oath says that the matters stated in the foregoing return are true.

[SEAL.] S. D. COWAN, *Clerk.*

And afterwards, to wit, on the 14th day of November, 1887, and 39th day of the regular September term, 1887, among others the following proceedings were had and entered of record, to wit:

STATE, to Use of JOHN S. LEMON *et al.*,
vs.
THE BOARD OF EQUALIZATION.

Come now the plaintiffs, by their attorneys, and file motion to strike out seperate return of Phil. Rogers, county clerk, and also file motion to annul assessment made by board of equalization, and also file motion to strike out parts of return of A. M. Dougherty.

(For motions see bill of exceptions.)

37 And afterward, to wit, on the 19th day of November, 1887, and 44th day of regular September term of said court, among others the following proceedings were had and entered of record, to wit:

STATE OF MISSOURI *ex Rel.* Estate of MILTON TOOTLE
vs.
THE BOARD OF EQUALIZATION, A. M. DOUGHERTY, *et al.*

By agreement of parties this cause is submitted to Joseph P. Grubb, special judge, and oath of office waived.

And now defendant Rogers has leave to file supplemental return to writ during Monday.

And afterwards, to wit, on the 22nd day of November, 1887, and 46th day of the regular September term of said court, among others the following proceedings were had and entered of record, to wit:

Upon the Relation of JOHN S. LEMON, ISAAC T. HOSEA, and JOHN S. LOGAN, Administrators of the Estate of Milton Tootle, Deceased,
vs.
COUNTY BOARD OF EQUALIZATION, A. M. DOUGHERTY, JOHN Kelly, James Farrell, Theodore Steinacker, and Philip Rogers.

At this day comes Philip Rogers, one of the said defendants, and files amended return to writ of certiorari heretofore issued; and also comes said Board of Equalization and files an amendment to the return heretofore by it made to said writ issued out of this court; and now said parties enter into the following agreement, which is by the consent and order of the court entered upon the records of the court, which is as follows, to wit: It is agreed by the par-
38 ties that the certified copy of order of board of equalization, filed with supplemental return of Philip Rogers, together with statement of said supplemental return as to time and manner of entry thereof, be taken and considered as a supplemental return of the other defendants, and that all motions filed by relator touching such supplemental return shall apply to all the defendants.

And thereupon come said relators, by their attorney, and file motion to strike out the amended returns on this day filed to said writ, and said motion, being by agreement taken up, is argued by counsel and submitted to the court—is sustained; and thereupon said cause coming on for hearing upon the motion heretofore filed by said relators to strike out the seperate return of said Philip Rogers, and the motion to strike out part of the return of A. M. Dougherty *et al.*, and the motion to quash, vacate, and annul the change of assessment attempted to be made by the said board of equalization of the valuation of the personal property of Milton Tootle, now deceased, for taxation for the year 1887, and to reinstate the assessment made by the assessor of Buchanan county for the personal property for said year, the same are by the court's order sustained. It is therefore considered and adjudged that all changes and judgments declaring changes in the assessed valuation of the personal property of Milton

Tootle for the year 1887, as made by the assessor of Buchanan county, Missouri, for taxation for said year be declared null and void; that the judgment as shown by the return here made be vacated, annulled, and for naught held and esteemed, and that the assessment made by the assessor of Buchanan county, Missouri, assessing said property for the said year 1887 at the sum of one hundred and four thousand two hundred and fifty ($104,250) dollars be reinstated and taken, deemed, and held to be the annual as-
39 sessment of said personal property of said Milton Tootle, now deceased, for said year; and it is further adjudged and ordered that said relators recover of said defendant their costs, charges herein expended and for execution therefor; and it is further ordered by the court that a certified copy of this judgment be made in duplicate and delivered to the sheriff of Buchanan county, Missouri, who shall thereupon serve one of said copies by delivering the same to Philip Rogers, clerk of the county court of Buchanan county, Missouri, and secretary of the board of equalization, at his office, at the court-house, in the city of St. Joseph, Buchanan county, Missouri, and that the other copy be returned to this court by said sheriff, with the return thereon showing the manner of service thereof.

And now comes defendant and files motion to set aside the judgment and for a new trial, and also motion in arrest of judgment herein.

(For motions see bill of exceptions.)

Which said supplemental return of Philip Rogers is in words and figures as follows, to wit:

STATE OF MISSOURI on the Relation and to the Use of JOHN S. Lemon, Isaac T. Hosea, and John S. Logan, Administrators of the Estate of Milton Tootle, Deceased, Plaintiff,

vs.

THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI; A. M. Dougherty, John Kelly, James Farrell, Theodore Steinackar, and Philip Rogers, Defendants.

Comes now Philip Rogers, one of the defendants herein, and for additional and further return to the writ heretofore issued therein says that in addition to his return filed herein on the 9th day of November, 1887, he mekes this further return, to wit:

40 That on Monday, the 4th day of April, 1887, the said Board of Equalization, composed of A. M. Dougherty, John Kelly, James Farrell, Theodore Steinacker, and James P. Boyle, met at the office of this defendant, who was then and there and still is county clerk of said county, and that each of said persons then and there took an oath faithfully and impartially to equalize the valuation of all the taxable property in said county, which said oath was duly and lawfully administered to each of said persons by this defendant, and said board then and there organized and proceeded to the performance of the duties prescribed by law; that it was the duty of this defendant, as the secretary of said board, to then and there enter the said oath upon the journal of said board as part of the proceedings thereof, but this defendant then and there omitted to enter

said oath of said persons composing said board of equalization on said journal of the proceedings of said board, and defendant has this the 21st day of November, 1887, as secretary of said board, entered said oaths upon the journal of said board as part of the proceedings thereof, and now here returns, as a part of the record of said board, a certified copy of said entry.

Which said certified copy, herewith returned, together with the record heretofore returned and filed herein, constitutes a full and all the record of the proceedings of said board in the matter of the assessment of the personal property of Milton Tootle; and, having made full return herein, asks to be hence discharged.

PHIL. ROGERS,
Clerk of County Court.

Philip Rogers, the above-named defendant, being first duly sworn, on his oath says that the matters stated in the foregoing return are true.

[SEAL.] JOHN F. IMEL,
Notary Public.

My commission expires May 14, 1891.

41 Be it remembered that on the 4th day of April, 1887, the county board of equalization met according to law.

Present: A. M. Dougherty, county judge; John Kelly, county judge; James Farrell, county judge; Theodore Steinacker, county surveyor; James P. Boyle, county assessor.

And each of said persons then and there took an oath fairly and impartially to equalize the valuation of all the taxable property in said county, which said oath was duly and lawfully administered to each of said persons by Philip Rogers, the duly elected, qualified, and acting clerk of said county, and that the said board then organized and proceeded to the performance of the duties prescribed by law.

STATE OF MISSOURI,
vs. } ss:
County of Buchanan,

I, Philip Rogers, clerk of the county court within and for said county, do hereby certify that the above and foregoing is a full, true, and perfect copy of an entry appearing of record upon the journal of the board of equalization of said county for the year 1887, as the same appears upon said journal.

In testimony whereof I have hereunto set my hand and affixed the seal of my said court this 21st day of November, A. D. 1887.

[SEAL.] PHIL. ROGERS, *Clerk.*

And afterwards, on the 25th day of November, A. D. 1887, it being the 47th day of said term of said court, among others the following proceedings were had and entered of record, to wit:

42 JOHN S. LEMON *et al.*
vs.
COUNTY BOARD OF EQUALIZATION *et al.*

Now here the defendants have leave to file bill of exceptions during the next term of this court, and by agreement of parties defendants have leave to amend motion for new trial by adding as further reasons "that the court erred in quashing the return of the respondents herein."

And now here motion for new trial and motion in arrest is continued, but this continuance not to be urged now or hereafter against validity if tender of taxes, if made while in conformity with judgment, if judgment of this court be finally overruled and judgment affirmed.

And afterwards, on the 17th day of March, 1888, it being the 64th day of the regular January term, 1888, of said court, among other the following proceedings were had and entered of record, to wit:

STATE *ex Rel.* MILTON TOOTLE
vs.
BOARD OF EQUALIZATION, A. M. DOUGHERTY, *et al.*

Comes now the parties, by their respective attorneys, and the motion for a new trial heretofore filed herein is taken up, submitted to the court, and by the court overruled; and also motion in arrest of judgment, heretofore filed herein, is taken up, submitted to the court, and by the court overruled.

And come now the defendants, by their attorney, and file bill of exceptions, which is signed, sealed, and made a part of the record, and also file affidavit for appeal to the Supreme Court, and appeal allowed.

Which said affidavit for appeal is in words and figures as follows, to wit:

43 In the Circuit Court of Buchanan County, State of Missouri, January Term, 1888.

STATE OF MISSOURI on the Relation and to the Use of JOHN S. Lemon, Isaac T. Hosea, and John S. Logan, Administrators of the Estate of Milton Tootle, Deceased,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI; A. M. Dougherty, John Kelly, James Farrell, Theodore Steinacker, and Philip Rogers, Defendants.

B. J. Woodson, being duly sworn, upon his oath says that he is the prosecuting attorney of said Buchanan county and one of the attorneys of defendants in the above-entitled cause and is personally acquainted with the issues and matters in said cause, and, upon behalf of all of said defendants, says that this application for an appeal is not made for vexation or delay, but because he believes the appellants to be injured by the judgment of the circuit court.

Wherefore defendants pray the court to grant them an appeal to the supreme court of this State.

BEN. J. WOODSON,
Prosecuting Attorney.

Subscribed and sworn before me the 16th day of March, 1888.
[SEAL.] S. D. COWAN, *Clerk.*

Which said bill of exceptions *are* in words and figures as follows, to wit:

In the Circuit Court of Buchanan County, Missouri.

THE STATE OF MISSOURI on the Relation and to the Use of John S. Lemon, Isaac T. Hosea, and John S. Logan, Administrators of the Estate of Milton Tootle, Deceased, Plaintiff,

vs.

THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI; A. M. Dougherty, John Kelly, James Farrell, Theodore Steinacker, and Philip Rogers, Defendants.

Be it remembered that among the proceedings had in the above-entitled cause in said court are the following:

On the 9th day of November, A. D. 1887, the respondents filed in said court their return to the writ of certiorari herein, including a full and complete copy, duly certified, of the proceedings of the board of equalization of Buchanan county, Missouri, mentioned in the writ.

And on the same day the respondent Philip Rogers filed a further seperate return to said writ.

And afterwards, to wit, on the 14th day of November, 1887, the relators filed in said court a motion to strike out the said seperate return of respondent Rogers; which said motion is in words and figures following:

"In the Circuit Court of Buchanan County, Missouri.

STATE OF MISSOURI upon the Relation of JOHN S. LEMON *et al.*, Relators,

vs.

COUNTY BOARD OF EQUALIZATION *et al.*, Defendants.

Now come the relators and move the court to strike out the papers filed herein and called a seperate return by Philip Rogers,
45 county clerk, one of the defendants herein, for the following reasons:

1st. Because said paper is no return of the writ issued from this court.

2nd. Because this court has no power or control over the records of the county board of equalization.

3rd. Because said paper does not show *that* any minute whatever of the acts set forth in said paper, so that neither this court nor the

said court wherein said acts are said to have been had and done has any power to order or allow the correction of said record of said county board of equalization.

H. K. WHITE,
Attorney for Relators."

And on the same day the relators filed in said court a motion to strike out of the return of the relators certain portions; which said motion is in words and figures as following:

" In the Circuit Court of Buchanan County, Missouri.

STATE OF MISSOURI *ex Rel.* JOHN S. LEMON *et als.*, Adm'n's M. Tootle, Dec's'd, Relators,
vs.
THE COUNTY BOARD OF EQUALIZATION *et als.*, Defendants.

Now come said relators and move the court to strike out of the return made by A. M. Dougherty and others all thereof, commencing with the words 'and for further return these defendants say' dow- to including the words 'then and there kept by the secretary of said board,' because it is attempted in said petition of said return to set forth matters other than those contained and shown by the transcript of the record of the board of equalization filed
46 herein and returned by said board of equalization and to which reference is made by said defendants.

Because said return attempted to state matters contradictory of said return so made by said board of equalization.

Because said return is in other respects illegal, unauthorized, and tenders issues irrelevant to the matters in dispute.

H. K. WHITE,
Attorney for Relators."

And on the same day the relators filed in said court their motion to vacate and annul the change in the assessment of the personal property of the estate of Milton Tootle, deceased, made by the county board of equalization and to reinstate the assessment made by the assessor of Buchanan county; which motion is in words and figures following:

" In the Circuit Court of Buchanan County, Missouri.

STATE OF MISSOURI upon Relation of JOHN S. LEMON *et al.*, Relators,
vs.
COUNTY BOARD OF EQUALIZATION *et al.*, Defendants.

Now come said relators and move the court to vacate and annul the pretended assessment or raise of assessment pretended to have been made of the personal estate of Milton Tootle, now deceased, for taxation for the year 1887 and to declare the same void and of no effect and to reinstate the assessment made by the assessor of Buchanan county, Missouri, as shown in the return made herein, for the following reasons:

1st. Because said return fails to show that any notice was given the relators of the intended action of said board of equaliza-
47 tion in reference to the assessment of the personal estate of Milton Tootle prior to the action assumed to have been taken.

2nd. Because the pretended notice as set forth in the return is made without authority of law.

3rd. Because no notice was given and the return shows that no notice was given of the intended action of said board of equalization.

4th. Because said return shows that said persons constituting said board of equalization failed to take the oath required to be taken by them before acting as such board of equalization.

5th. Because said board or said pretended board assumed to act in reference to the assessment of Milton Tootle without giving notice of such intended action to these relators.

6th. Because said board of equalization or persons pretending to act as such finally adjourned without giving such notice or ordering notice to be given.

7th. Because the notice pretended to have been given by Philip Rogers, clerk of the county court of Buchanan county, of such pretended action in reference to said estate of Milton Tootle is not a noticed authorized by law to be given.

8th. Because said action of said pretended court of appeals was not the action of any court known to the law or of any persons having a right to sit as a court.

9th. Because said board of equalization or the persons assuming to act as such did on the 8th day of April finally adjourned and had no power to reassemble.

10th. Because said return in other respects shows that said attempted change of assessment of the personal estate of Milton Tootle was unauthorized, illegal, and void.

H. K. WHITE,
Att'y for Relators."

48 And afterwards, to wit, on the 22nd day of November, 1887, the respondent Philip Rogers filed his further and supplemental return to the writ herein. Whereupon it was agreed by and between all the parties hereto that the certified copy of order of the board of equalization filed with said supplemental return, together with the statement of said supplemental return as to the time and manner of entry thereof, be considered as a supplemental return of all the respondents, and that all motions filed by relators touching such supplemental return should apply to all the respondents.

And thereupon came the relators, by their attorneys, and filed their motion to strike out the further and supplemental returns so filed; which said motion is in words and figures following:

"In the Circuit Court of Buchanan County, Missouri.

STATE OF MISSOURI *ex Rel.* JOHN S. LEMON *et als.*, Admin. of M. Tootle, Dec'd, Relators,
vs.
THE COUNTY BOARD OF EQUALIZATION *et als.*, Defendants.

Now come said relators and move the court to strike out of the record herein the amended return made herein by Philip Rogers, county clerk, and also the amendment to the return of the county board of equalization for the following reasons:

Because said amendment to the record of the county board of equalization was made without authority of law.

Because said amendment shows that it was made without direction of the county board of equalization.

Because it was made without notice to the relators.

Because said amendment was made without any minute on the records of said county board and from the recollection of the clerk.

H. K. WHITE,
Att'y for Relators."

49 It was then ordered, for the purposes of this action and of all proceedings herein, that relators, John S. Lemon, Isaac T. Hosea, and John S. Logan, have at all times since January 17th, 1887, been, and still are, the duly appointed and acting administrators of the estate of Milton Tootle, who died January 2, 1887.

And thereupon the said motion last above set forth was, by agreement, taken up and heard, and the court thereupon, after hearing the argument of the counsel, sustained said motion and struck out the said further and supplemental return of the respondents; to which action of the court in so sustaining said motion and in so striking out the said additional ans supplemental return for the causes in said motion alleged the respondents at the time excepted.

And thereupon, on the same day, this cause coming on for further hearing upon the motion heretofore filed by the relators to strike out the seperate return of respondent Philip Rogers, and upon the motion to strike out a part of the return of all the relators, filed on the 9th day of November as aforesaid, and also upon the said motion to quash, vacate, and annul the change of the assessment of the personal estate of Milton Tootle, deceased, made by the board of equalization, and to reinstate the assessment made by the assessor of Buchanan county, the court sustained each of said motions and by its order and judgment struck out the said seperate return of respondent Rogers and all that portion of said return of all the respondents in that behalf set out in the said motion to strike out the same and quash, vacate, and annul the change of assessment made by the board of equalization aforesaid and reinstate the assessment made by the assessor of Buchanan county, and rendered its final judgment herein according to the prayer of relators and against the respondents, as appears by the record; to which action of the court, in so

sustaining said motions and each of them and in making said
50 orders and judgments and each of them, the respondents at the same time excepted.

And afterward, on the same day, the respondents filed their motion for a new trial; which said motion is in words and figures following:

"In the Circuit Court of Buchanan County, Missouri.

STATE OF MISSOURI on the Relation and to the Use of JOHN S. Lemon, Isaac T. Hosea, and John S. Logan, Administrators of the Estate of Milton Tootle, Deceased, Plaintiff,

vs.

THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI; A. M. Dougherty, John Kelly, James Farrell, Theodore Steinacker, and Philip Rogers, Defendants.

Come now the above-named defendants and move the court to set aside its finding and judgment herein and grant them a rehearing in this cause, and as grounds therefor say:

1st. That the finding and judgment of the court is against the evidence.

2d. That the court erred in striking out the supplemental return of defendant Philip Rogers.

3rd. That the court erred in striking out the supplemental return of defendants Dougherty, Kelly, Farrell, and Steinacker.

4th. That the court erred in setting aside and vacating the action of the board of equalization as shown by the record.

5th. That the court erred in refusing to make an order permitting the defendant Rogers to amend the record of the board of equalization by showing that the members thereof were by him sworn, as required by statute.

RAMEY & BROWN,
WOODSON & WOODSON,
Defendants' Attorneys."

51 And on the same day the respondents filed their motion herein to arrest the judgment of the court; which said motion is in words and fogures following:

"In the Buchanan Circuit Court.

THE STATE OF MISSOURI on the Relation and to the Use of JOHN S. Lemon, Isaac T. Hosea, and John S. Logan, Administrators of the Estate of Milton Tootle, Deceased, Plaintiff,

vs.

THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI; A. M. Dougherty, John Kelly, James Farrell, Theodore Steinacker, and Philip Rogers, Defendants.

Come now the above-named defendants and move the court to arrest its judgment in the above-entitled cause, and for reasons therefor say:

1st. That upon the record of this cause the plaintiff was not entitled to judgment setting aside, vacating, or in any manner impa-r-ing the action of the board of equalization with reference to the assessment of the personal property of Milton Tootle.

2nd. Because upon the record the judgment should have been for defendant-.

3rd. Because the judgment is not supported by the record.

RAMEY & BROWN,
WOODSON & WOODSON,
Attorneys for Defendants."

The hearing of both of which said motions last above set forth was by the court continued until the next term thereof.

And afterward, to wit, at the January term, 1888, of this court and on the — day of March, A. D. 1888, the motion for a new trial heretofore filed in this cause was by the court taken up and
52 heard and overruled; to which action of the court in so overruling the said motion for a new trial the respondents at the time excepted.

And afterward, on the same day, the motion in arrest of judgment heretofore filed in this cause was by the court taken up, heard, and overruled; to which action of the court in so overruling said motion the respondents at the time excepted.

Defendants then filed affidavit for an appeal to the supreme court which is allowed.

And now the said respondents present this their bill of exceptions in said cause and ask that the same be signed and sealed by the judge of this court and made a part of the record herein, which is done during the January term, 1888, of this court.

JOS. P. GRUBB,
Special Judge of Buchanan Cir. Court.

STATE OF MISSOURI, } *ss:*
County of Buchanan, }

I, S. D. Cowan, clerk of the circuit court in and for the county and State aforesaid, do certify that the foregoing is a full, true, and complete transcript of the record entries and proceedings made as aforesaid in the above-entitled cause as the same appears of record and on file in my office.

In testimony whereof I hereunto set my hand and affix
[SEAL.] the seal of said court, at office, in the city of St. Joseph, this 3rd day of May, A. D. 1888.

S. D. COWAN, *Clerk,*
By S. M. CARSON,
Deputy Clerk.

53 And afterwards, to wit, on the 16th day of April, 1891, the further following proceedings were had in said cause, to wit:

* * * * * * *

STATE, *ex Rel.* J. S. LEMON *et al.*, Resp.,
vs.
B'D OF EQUALIZATION OF BUCHANAN CO., App.

Come now the said parties, by attorneys, and, after argument herein, submit these causes to the court.

And afterwards, to wit, on the 9th day of November, 1891, the further following proceedings were had in said cause, to wit:

STATE OF MISSOURI on the Relation and to the Use of John S. Lemon, Isaac T. Hosea, and John S. Logan, Administrators of the Estate of Milton Tootle, Deceased, Respondents,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN County, Missouri; A. M. Dougherty, John Kelley, James Farrell, Theodore Steinacker, and Philip Rogers, Appellants.

Appeal from Buchanan County Circuit Court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid by the said Buchanan county circuit court rendered, be reversed, annulled, and for naught held and esteemed, and that the said appellants be restored to all things which they have lost by reason of the said judgment. It is further considered and adjudged by the court that the said cause be remanded to the said Buchanan county circuit court for further proceedings to be had therein in conformity with the opinion
54 of this court herein delivered, and that the said appellants recover against the said respondents their costs and charges herein expended, and have therefor execution.

(Opinion filed.)

Which said opinion is in words and figures as follows, to wit:

In the Supreme Court of Missouri, Division No. 1, October Term, 1891.

STATE *ex Rel.* J. S. LEMON *et al.*, Respondents,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY *et al.*, Appellants.

Appeal from Buchanan circuit court.

Hon. J. P. Grubb, special judge.

Statement.

The administrators of the estate of Milton Tootle procured the issuance of a writ of certiorari against the board of equali-

zation of Buchanan county for the purpose of vacating and annulling the action of the members of that board, for that they, as is alleged, without any complaint made or appeal taken or notice to relators, had changed or raised the valuation or assessment of said Tootle's personal property as returned by him in his lifetime from $104,250 to $980,000.

The board of equalization, at their meeting on the 25th day of April, 1887, and on the appearance of counsel on behalf — said administrators, reduced said last-mentioned sum to $710,000.

The return of the respondents shows that they heard evidence on the date last mentioned as to the value of the property in question, but did not preserve the same, nor was such preservation asked by relators' counsel, who fully argued the cause, and after
55 that the change in the valuation of the property was made, and the transcript which accompanies the return of the respondents shows also that before making the change in valuation last aforesaid evidence was heard on the part of relators against the increase of the valuation of Tootle's personal property as raised by the board of equalization, and after taking the matter under advisement made the change last aforesaid.

The result of the hearing in the circuit court was that on motion of relators the change made in the valuation of the personal property of Tootle's estate was by the judgment of that court vacated and annulled, hence this appeal.

The statutory provisions relative to the subject of this litigation are these:

"SEC. 6671. There shall be in each county in this State, except the city of St. Louis, a county board of equalization, which board shall consist of the county clerk, who shall be secretary of the same, but have no vote, the county surveyor, the judges of the county court, and the county assessor, which board shall meet at the office of the county clerk on the first Monday in April of each year.

SEC. 6672. Said board shall have power to hear complaints and to equalize the valuation and assessments upon all real and personal property within the county which is made taxable by law, and having each taken an oath, to be administered by the clerk, fairly and impartially to equalize the valuation of all the taxable property in such county, shall immediately proceed to equalize the valuation and assessment of all such property, both real and personal, within their counties, respectively, so that each tract of land shall be entered on the tax book at its true value: Provided, that said board shall not reduce the valuation of the real or personal property of the county below the value thereof as fixed by said State board of equalization.

56 SEC. 6673. The following rules shall be observed by county boards of equalization: First, they shall raise the valuation of all such tracts or parcels of land, and any personal property, as in their opinion have been returned below their real value, according to the rule prescribed by this act for such valuation; but after the board shall have raised the valuation of such real estate it shall give public notice of the fact, specifying the property and the amount

raised, either by advertisement in a newspaper published in the county, or if there be none, then by posters, one to be put up in each township, and that said board will meet on the fourth Monday of April to hear reasons, if any be given, why such increase should not be made; second, they shall reduce the valuation of such tracts or parcels of land or any personal property which, in their opinion, have been returned above their true value as compared with the average valuation of all the real and personal property of their county.

SEC. 6674. The said board shall hear and determine all appeals made from the valuation of property, made by the assessor, in a summary way, and shall correct and adjust the assessment accordingly. The county clerk shall keep an accurate record of the proceedings and orders of the board, and the assessor shall correct all erroneous assessments, and the clerk shall adjust the tax book according to the orders of said board and the orders of the State board of equalization: Provided, that in adding or deducting such per centum to each tract or parcel of real estate, as required by said board, he shall add or deduct in each case any fractional sum of less than fifty cents, so that the value of any separate tract shall contain no fraction, of a dollar." 2 vol. Rev. Stat., 1879.

Opinion of the Court.

The salient points of objection to the action of the board of equalization upon which relators rely for an affirmance of the
57 judgment will now be considered:

1. And first as to the claim that the members of the board were not sworn. It will be observed that though section 6672, *supra*, requires the members of the board to be sworn, yet it does not require the fact of the oath having been taken to be recited of record, nor does that section require the oath to be in writing. Unless the law expressly requires the oath to be written it need not be nor subscribed by the affiant, but may be taken by "word of mouth." Mecheni's Pub. Off., sec. 261; Davis *v.* Berger, 54 Mich., 652.

Though the law requires an oath of office to be taken, yet its being taken is not indispensible; it is a mere incident of the office, constituting no part of the office itself. Mechin's Pub. Off., &c., sec. 255; State *v.* Stanley, 66 N. C., 59. And it has been ruled that though the members of a common council are required by the charter to be sworn before they enter upon the duties of their office, and they are sworn before an officer not authorized to administer the oath, they are still officers *de facto*, and a tax levied by them is not invalid nor will it be set aside even in a direct proceeding. State *v.* Perkins, 24 N. J. L., 409.

Such persons thus situated are at least *de facto* if not *de jure* officers, and their acts are valid to all intents and purposes. Petition of Kendall, 85 N. Y., 302; State *v.* Douglass, 50 Mo., 593; Cooley Tax. (2nd ed.), 255, 256. Besides, the members of the board of equalization were already sworn officers of the law and were *ex*

officio members of that board in consequence of their official standing.

These considerations render it wholly unnecessary to rule upon the power of the county clerk to supply certain supposed omissions in the record after the board of equalization had adjourned "*sine die.*"

2. There is no principle more elementary or fundamental
58 than that no one can be passed upon either in his person or estate without being first given an opportunity to be heard.

This principle has been frequently exemplified by cases adjudicated in this court. Tax proceedings constitute no exception to the rule demanding notice as a prerequisite in order to give validity to such proceedings. Provision for notice is part and parcel of "due process of law." Cooley Tax. (2nd ed.), 363, 364. Even if a statute contain no provision for or mention of notice, the law will imply that notice is requisite. Brown *v.* Weatherby, 71 Mo., 152; Wickham *v.* Page, 49 Mo., 526; Laughlin *v.* Fairbanks, 8 Mo., 370.

Now, though section 6673 is very faulty in its construction, yet, guided by the principle just announced, there can be no question that notice was intended by that section to be given as to personal property as well as to real estate. What the law will imply is as much a part of a legislative enactment as though set forth in terms.

At any rate, notice was given as to the personal property in question, or sufficiently well at least to bring relators before the board of equalization when it sat to hear what might properly be brought before it for determination. There, the counsel of relators being present, the matter of the increased valuation was fully discussed upon evidence adduced and the determination of the board of equalization announced—a board composed of the very same persons who composed the original board, and who came together again at the command of the law at a day certain and after giving the notice the law required. The fact that their adjournment was *sine die* neither added to nor substracted from the full measure of the jurisdiction which the law conferred, so that whatever irregularities had previously occurred were cured by the subsequent appearance of relators before a *quasi* tribunal having plenary powers and jurisdiction over the subject-matter and whose action must
59 therefore be regarded as final in a proceeding by certiorari, except as to matters of jurisdiction, and that is sufficiently disclosed by the record already mentioned.

The merits of the case cannot be gone into in a proceeding of this nature. Nothing but the record is brought up in an instance like the present. Han. & St. Joe *v.* State Board, 64 Mo., 294.

The appearance of relators, counsel before the board of Equalization, when it met at the time appointed by law, and at the time specified in the notice given, must be regarded as a waiver and cure all of all previous defects as to notice. This is the view taken in Wisconsin under a similar statute. State *v.* Gaylord, 73 Wis., 306. See also Brown *vs.* Weatherby, 71 Mo., 152.

For these reasons we reverse the judgment and remand the cause,

with directions that the lower court enter a judgment restoring the valuation as made by the board of equalization. All concur.

T. A. SHERWOOD.

60 In the Supreme Court of Missouri, Division No. 1, October Term, 1891.

STATE *ex Rel.* JOHN S. LEMON *et al.*, Respondents,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN CO UNITY, *et al.*, Appellant.

The above-named respondents respectfully move the court to grant them a rehearing in this case for the following reasons:

1. Because the court in the opinion delivered herein overlooked this material point made in respondents' brief, to wit. That the order of the board of equalization was void "because the order does not show what class of personal property was supposed to have been improperly valued."

(Respondents' Brief, p. 5, subdivision 4 of point 3.)

2. Because the court in said opinion overlooked the point made in respondents' brief, that the board of equalization at the meeting begun and held on the 4th Monday of April, 1887, had no authority to consider anything but raises of the valuation of real estate.

(See point 4 of respondents' brief and argument.)

H. K. WHITE & LANCASTER,
HALL & PIKE,
Att'ys for Respondent.

61 In the Supreme Court of Missouri, October T., 1891.

STATE *ex Rel.* J. S. LEMON *et al.*, Respondents,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI, Appellant.

It is agreed that respondents may have until November 27th' 1891, in which to file brief upon their motion for rehearing, and that appellants shall be served with copy thereof, and that they may have fifteen days after service to file brief in opposition thereto, serving copy upon respondents.

PORTER & WOODSON,
Att'ys for Appellant.
H. K. WHITE, LANCASTER,
HALL & PIKE,
Att'ys for Respondent.

62 And afterwards, to wit, on the 18th day of November, 1891, the further following proceedings were had in said cause, to wit:

STATE *ex Rel.* J. S. LEMON, Resp.,
v.
B'D EQUAL. BUCHANAN COUNTY.

Come now the said respondent, by attorney, and files his motion for a rehearing herein.

And afterwards, to wit, on the 22d day of December, 1891, the further following proceedings were had in said cause, to wit:

* * * * * * *

STATE *ex Rel.* J. S. LEMON, Resp.,
v.
B'D OF EQUAL. OF BUCHANAN CO., App.

* * * * * * *

Now, at this day, the court, having fully considered and understood the motions heretofore filed for a rehearing of these causes, doth order that the same be, and they are hereby, denied.

And afterwards, to wit, on the 28th day of December, 1891, the further following proceedings were had in said cause, to wit:

STATE *ex Re-.* JNO. S. LEMON *et al.*, Resp.,
v.
BOARD OF EQUALIZATION, &c., App.

Come now the said respondents, by attorney, and file their motion to transfer this cause to the court in banc.

And afterwards, to wit, on the 8th day of February, 1891, the further following proceedings were had in said cause, to wit:

STATE *ex Rel.* J. S. LEMON *et al.*, Resp.,
v.
BOARD OF EQUALIZATION *et al.*, App.

Now, at this day, the court, having fully considered and understood the motion heretofore filed to transfer this cause to the court in banc, doth order that said motion be, and the same is hereby, denied.

63 In the Supreme Court of Missouri, Division No. 1, October Term, 1891.

THE STATE OF MISSOURI *ex Rel.* JOHN S. LEMON *et al.*, Adm'r-, etc., M. Tootle, Dec'd, Respondents,
vs.
THE COUNTY BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI, *et al.*, Appellants.

Motion to Transfer Cause to the Court in Banc.

The respondents respectfully move the court to transfer their cause to the court in banc for the following reason: A Federal

question is involved in this case, to wit, the constitutionality of the statute under which the proceedings in suit were had, in view of section 1, article 14, of amendments to the Constitution of the United States, which provides that no State shall "deprive any person of life, liberty, or property without due process of law. * * *" (Point 1 of respondents' brief and argument; sec. 4 of constitutional amendment at election held Nov., 1890.)

H. K. WHITE AND LANCASTER,
HALL & PIKE, *Att'ys for Respondents.*

64 STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on the 2d day of February, 1892, there was filed in the office of the circuit clerk within and for said county a mandate from the supreme court of the State of Missouri in the case of State *ex rel.* J. S. Lemon *et al. vs.* The Board of Equalization of Buchanan County *et al.;* which said transcript is in words and figures as follows, to wit:

In the Supreme Court of Missouri, Division No. 1, October Term, 1891.

STATE *ex Rel.* J. S. LEMON *et al.*, Respondents,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY *et al.*, Appellants.

Appeal from Buchanan circuit court.

Hon. J. P. Grubb, special judge.

Statement.

The administrators of the estate of Milton Tootle procured the issuance of a writ of certiorari against The Board of Equalization of Buchanan County for the purpose of vacating and annulling the action of the members of that board, for that they, as is alleged, without any complaint made or appeal taken or notice to relators, had changed or raised the valuation or assessment of said Tootle's personal property, as returned by heirs in his lifetime, from $104,250 to $980,000.

The board of equalization, at their meeting on the 25th day of April, 1887, and on the appearance of counsel on behalf —
65 said administrators, reduced said last-mentioned sum to $710,000.

The return of the respondents shows that they heard evidence on the date last mentioned as to the value of the property in question, but did not preserve the same, nor was such preservation asked by relators' counsel, who fully argued the cause, and after that the change in the valuation of the property was made; and the transcript which accompanies the return of the respondents shows also that before making the change in valuation last aforesaid evidence

was heard on the part of relators against the increase of the valuation of Tootle's personal property as raised by the board of equalization, and, after taking the matter under advisement, made the change last aforesaid.

The result of the hearing in the circuit court was that, on motion of relators, the change made in the valuation of the personal property of Tootle's estate was by the judgment of that court vacated and annulled; hence this appeal.

The statutory provisions relative to the subject of this litigation are these:

"SEC. 6671. There shall be in each county in this State, except the city of St. Louis, a county board of equalization, which board shall consist of the county clerk, who shall be secretary of the same, but have no vote, the county surveyor, the judges of the county court, and the county assessor, which board shall meet at the office of the county clerk on the first Monday in April of each year.

"SEC. 6672. Said board shall have power to hear complaints
66 and to equalize the valuation and assessments upon all real and personal property within the county which is made taxable by law, and, having each taken an oath, to be administered by the clerk, fairly and impartially to equalize the valuation of all the taxable property in such county, shall immediately proceed to equalize the valuation and assessments of all such property, both real and personal, within their counties respectively, so that each tract of land shall be entered on the tax book at its true value: Provided, that said board shall not reduce the valuation of the real or personal property of the county below the value thereof as fixed by said State board of equalization.

"SEC. 6673. The following rules shall be observed by county boards of equalization: First, they shall raise the valuation of all such tracts or parcels of land, and any personal property, as in their opinion have been returned below their real value, according to the rule prescribed by this act for such valuation; but after the board shall have raised the valuation of such real estate, it shall give public notice of the fact, specifying the property and the amount raised, either by advertisement in a newspaper published in the county, or if there be none, then by posters, one to be put up in each township, and that said board will meet on the fourth Monday of April to hear reasons, if any may be given, why such increase should not be made; second, they shall reduce the valuation of such tracts or
67 parcels of land, or any personal property which, in their opinion, have been returned above their true value, as compared with the average valuation of all the real and personal property of their county.

"SEC. 6674. The said board shall hear and determine all appeals made from the valuation of property, made by the assessor, in a summary way, and shall correct and adjust the assessment accordingly. The county clerk shall keep an accurate record of the proceedings and orders of the board, and the assessor shall correct all erroneous assessments, and the clerk shall adjust the tax books according to the orders of said board and the orders of the State board

of equalization: Provided, that in adding or deducting such per centum to each tract or parcel of real estate, as required by said board, he shall add or deduct in each case any fractional sum of less than fifty cents, so that the value of any separate tract shall contain no fractions of a dollar." 2 vol. Rev. Stat. 1879.

Opinion of the Court.

The salient points of objection to the action of the board of equalization upon which relators rely for an affirmance of the judgment will now be considered.

1. And first as to the claim that the members of the board were not sworn. It will be observed that though section 6672, *supra*, requires the members of the board to be sworn, yet it does not require the fact of the oath having been taken to be recited of record, nor does that section require the oath to be in writing. Unless
68 the law expressly requires the oath to be written it need not be, nor subscribed by the affiant, but may be taken by "word of mouth." Mechin's Pub. Off., sec. 261; Davis *vs.* Berger, 54 Mich., 652.

Though the law requires an oath of office to be taken, yet its being taken is not indispensible. It is a mere incident of the office, constituting no part of the office itself—Mechin's Pub. Off., &c., sec. 255; State *vs.* Stanley, 66 N. C., 59—and it has been ruled that though the members of a common council are required by the charter to be sworn before they enter upon the duties of their office and they are sworn before an officer not authorized to administer the oath they are still officers *de facto*, and a tax levied by them is not invalid, nor will it be set aside, even in a direct proceeding. State *v.* Perkins, 24 N. J. L., 409.

Such persons *such* situated are at least *de facto*, if not *de jure*, officers, and their acts are valid to all intents and purposes. Petition of Kendall, 85 N. J., 302; State *vs.* Douglass, 50 Mo., 593; Cooley, Tax (2nd ed.), 255, 266. Besides, the members of the board of equalization were already sworn officers of the law and were *ex officio* members of that board in consequence of their official standing. These considerations render it wholly unnecessary to rule upon the power of the county clerk to supply certain supposed omissions in the record after the board of equalization had adjourned "*sine die*."

2. There is no principle more elementary or fundamental
69 than that no one can be passed upon, either in his person or estate, without being first given an opportunity to be heard.

This principle has been frequently exemplified by cases adjudicated in this court. Tax proceedings constitute no exception to the rule demanding notice as a prerequisite in order to give validity to such proceedings. Provision for notice is part and parcel of "due process of law." Cooley, Tax (2d ed.), 363, 364.

Even if a statute contain no provision for or mention of notice, the law will imply that notice is requisite. Brown *v.* Weatherby, 71 Mo., 152; Wickham *v.* Page, 49 Mo., 526; Laughlin *v.* Fairbanks, 8 Mo., 370.

Now, though section 6673 is very faulty in its construction, yet, guided by the principle just announced, there can be no question that notice was intended by that section to be given as to personal property as well as to real estate. What the law will imply is as much a part of a legislative enactment as though set forth in terms. At any rate, notice was given as that section evidently contemplates, and it was given as to the personal property in question, or sufficiently well, at least, to bring relators before the board of equalization when it sat to hear what might properly be brought before it for determination. There, the counsel of relators being present, the matter of the increased valuation was fully discussed upon evidence adduced and the determination of the board of equalization announced—a board composed of the very same persons who
70 composed the original board, and who came together again at the command of the law at a day certain, and after giving the notice the law required. The fact that their adjournment was *sine die* neither added to nor subtracted from the full measure of the jurisdiction which the law conferred; so that whatever irregularities had previously occurred were cured by the subsequent appearance of relators before a *quasi* tribunal having plenary powers and jurisdiction over the subject-matter and whose action must therefore be regarded as final in a proceeding by certiorari, except as to matters of jurisdiction, and that is sufficiently disclosed by the record already mentioned.

The merits of the case cannot be gone into in a proceeding of this nature. Nothing but the record is brought up in an instance like the present. Han. & St. Joe *v.* State Board, 64 Mo., 294.

The appearance of relators' counsel before the board of equalization, when it met at the time appointed by law and at the time specified in the notice given, must be regarded as a waiver and cure-all of all previous defects as to notice. This is the view taken in Wisconsin under a similar statute. State *v.* Gaylord, 73 Wis., 306. See, also, Brown *vs.* Weathersby, 71 Mo., 152.

For these reasons we reverse the judgment and remand the cause, with directions that the lower court enter a judgment restoring the valuation as made by the board of equalization. All concur.

T. A. SHERWOOD.

71 STATE OF MISSOURI, *sct:*

I, John R. Green, clerk of the supreme court of Missouri, do hereby — that the foregoing is a true copy of the opinion of division No. 1 of said court, delivered in the foregoing-entitled cause on the 9th day of Nov., 1891, as fully as the same appears on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court. Done at office, in the
[SEAL.] city of Jefferson, State aforesaid, this 15th day of M'ch, 1892.

JNO. R. GREEN, *Clerk*,
By W. D. FISHER, *D. C.*

In the Supreme Court of Missouri, October Term, 1891.

STATE OF MISSOURI on the Relation and to the Use of JOHN D. Lemon, Isaac T. Hosea, and John S. Logan, Administrators of the Estate of Milton Tootle, Deceased, Respondents,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI; A. M. Dougherty, John Kelly, James Farrell, Theodore Steinacker, and Philip Rogers, Appellants.

Appeal from Buchanan county circuit court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid by the said Buchanan
72 county circuit court rendered, be reversed, annulled, and for naught held and esteemed, and that the said appellants be restored to all things which they have lost by reason of the said judgment.

It is further considered and adjudged by the court that the said cause be remanded to the said Buchanan county circuit court for further proceedings to be had therein in conformity with the opinion of this court herein delivered, and that the said appellants recover against the said respondents their costs and charges herein expended and have therefor execution.

(Opinion filed.)

STATE OF MISSOURI, *sct:*

I, Jacob D. Conner, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the judgment of said supreme court entered of record at the October term thereof, 1891, and on the 9th day of November, 1891, in the above-entitled cause.

Given under my hand and seal of said court, at the city
[SEAL.] of Jefferson, this 20 day of November, 1891.

JACOB D. CONNER, *Clerk.*

And afterwards, on the 15th day of June, 1892, at and during the regular May term of the circuit court within and for said county, division No. 1, Hon. A. M. Woodson, judge, presiding, among
73 others, the following proceedings were had and entered of record, to wit:

STATE *ex Rel.* JOHN S. LEMON *et al.*, Plaintiffs,
vs.
THE BOARD OF EQUALIZATION OF BUCHANAN COUNTY, MISSOURI, Defendants.

Now, on this day, this cause coming on further to be heard in accordance with the judgment and mandate of the supreme court of the State of Missouri heretofore rendered herein, it is thereupon

considered by the court that the valuation of the personal property of Milton Tootle for taxation for the year 1887, as made by the board of equalization of Buchanan county, Missouri, for that year at the sum of seven hundred and ten thousand dollars ($710,000.00) be and the same is in all things restored, and that the proceedings of said board of equalization in the matter of the equalization of the assessment of the personal property of Milton Tootle for taxation for said year be, and the same are hereby, affirmed in all things, and that defendants recover of relator- their costs, to be paid out of the estate of Milton Tootle, deceased.

And come now the plaintiffs, by their attorney, and presents bill of exceptions, which is signed, sealed, and made a part of the record; which said bill of exceptions is in words and figures as follows, to wit:

74 In the Circuit Court of Buchanan County, Missouri.

STATE OF MISSOURI *ex Rel.* JOHN S. LEMON *et al.*, Administrators of Milton Tootle, Deceased, Plaintiffs,
vs.
THE COUNTY BOARD OF EQUALIZATION *et al.*, Defendants.

Be it remembered that on the fifteenth day of June, 1892, this cause came on for hearing before Honorable Joseph P. Grubb, heretofore selected as special judge herein, and thereupon said defendants presented to the court the mandate of the supreme court of this State and the opinion of said court and moved this court to enter judgment herein in accordance with said mandate and said opinion; and thereupon said plaintiff- and said relators objected to the entering of said judgment as prayed:

1st. Because said judgment is illegal.

2nd. Because the statutes of the State of Missouri regulating county board- of equalization do not provide for the hearing of parties whose personal property is raised in value by said board of equalization.

3d. Because, as the record herein shows, no hearing was given by said board of equalization to said relators.

4th. Because no notice was given by said board equalization of any intended action by said board in reference to the said assessment.

5th. Because the statute of the State of Missouri regulating proceedings of county boards of equalization is in violation of
75 section one of article fourteen of the amendments of the Constitution of the United States of America.

6th. Because division number one of the supreme court of the State of Missouri, in which division this case was pending, refused to order the case to be heard in banc, as asked to be done by these relators, upon the ground that a Federal question was involved in this case.

7th. Because said judgment, if entered, deprives these relators and the estate of Milton Tootle, deceased, of this property without due process of law.

The court overruled each and all of said objections and granted the prayer of said defendants and entered judgment reinstating the valuation placed upon the property of Milton Tootle, deceased, for the year 1887 at the same figures by the board of equalization, to wit, seven hundred and ten thousand dollars ($710,000); and at the time said plaintiffs and said relators except to each and every one of said rules and except to the entry of said judgment and each and every part thereof, and now tender *its* bill of exceptions and ask that the same may be signed, sealed, and made a part of the record, which is accordingly done.

Witness my hand and seal this fifteenth day of June, 1892.

JOSEPH P. GRUBB,
Special Judge.

76 And afterwards, to wit, on the 6th day of August, 1892, there was filed in said cause and with the clerk of said court the following bond, with the approval of the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, endorsed thereon, to wit:

Know all men by these presents that we, John S. Lemon, Isaac T. Hosea, and John S. Logan, administrators of the estate of Milton Tootle, deceased, as principals, and R. L. McDonald and S. C. Woodson, as sureties, acknowledge ourselves to owe and stand indebted to The Board of Equalization of Buchanan County, Missouri, in the penal sum of fifteen thousand dollars ($15,000); for the payment of which, well and truly to be made, we bind ourselves, our respective successors, heirs, executors, and administrators, firmly by these presents.

The condition of this bond is such that whereas the above-named principals have sued out from the United States Supreme Court a writ of error to the circuit court of Buchanan county, Missouri, in a certain case therein pending, wherein The State of Missouri upon the relation of John S. Lemon, Isaac T. Hosea, and John S. Logan, administrators of the estate of Milton Tootle, deceased, was relator, and The Board of Equalization of Buchanan County, Missouri, was defendant:

Now, if said plaintiff in error shall prosecute said writ of error to effect and shall fail to make its plea good and shall answer
77 all damages and costs, then this bond shall be null and void; otherwise to remain in full effect.

Signed and sealed with our seals this twenty-fifth day of July, 1892.

JNO. S. LEMON. [SEAL.]
ISAAC T. HOSEA. [SEAL.]
JNO. S. LOGAN. [SEAL.]
R. L. McDONALD. [SEAL.]
S. C. WOODSON. [SEAL.]

This bond is approved for the within sum this 2d day of August, A. D. 1892.

CHAS. A. POLLOCK,
Clerk U. S. Circuit Court, St. Joseph Division,
Western District of Missouri.

Approved.

DAVID J. BREWER,
Associate Justice S. C. U. S.

STATE OF MISSOURI, }
County of Buchanan, } ss:

I, S. D. Cowan, clerk of the circuit court in and for the county and State aforesaid, do certify that the foregoing is a full, true, and complete transcript of the record made as aforesaid in the above-entitled cause as the same appears of record and on file in my office.

Seal Buchanan Circuit Court, Missouri.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in the city of St. Joseph, this 6th day of August, A. D. 1892.

S. D. COWAN, *Clerk,*
By C. M. THOMPSON,
Deputy Clerk.

[Endorsed:] State *ex rel.* John S. Lemon *et al. vs.* The Board of Equalization of Buchanan County, Mo. Transcript to Supreme Court of the United States. Fee, $4.00, p'd by pl'ff.

Endorsed on cover: Case No. 15,104. Missouri, Buchanan county circuit court. Term No., 1134. The State of Missouri *ex rel.* John S. Lemon, Isaac T. Hosea, & John S. Logan, administrators of Milton Tootle, dec'd, plaintiffs in error, *vs.* The Board of Equalization of Buchanan County, Missouri. Filed August 16, 1892.